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Meeting of States Parties

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Report of the sixteenth Meeting of States Parties

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I. Introduction

1. The sixteenth Meeting of States Parties to the United Nations Convention on the Law of the Sea[1] was held in New York from 19 to 23 June 2006, in accordance with article 319, paragraph 2 (e), of the Convention and the decision taken by the General Assembly at its sixtieth session (resolution 60/30, para. 21).

2. Pursuant to that decision and in accordance with rule 5 of the Rules of Procedure for Meetings of States Parties (SPLOS/2/Rev.3), invitations to participate in the Meeting were addressed by the Secretary-General of the United Nations to all States parties to the Convention. In conformity with rules 18 and 37 of the Rules of Procedure, invitations were also addressed to observers including the President and the Registrar of the International Tribunal for the Law of the Sea, the Secretary-General of the International Seabed Authority and the Chairman of the Commission on the Limits of the Continental Shelf.

II. Organization of work

A. Opening of the sixteenth Meeting of States Parties and election of officers

3. Ambassador Andreas D. Mavroyiannis (Cyprus), President of the fifteenth Meeting of States Parties, opened the sixteenth Meeting.

4. The Meeting elected by acclamation Ambassador Raymond O. Wolfe (Jamaica) President of the sixteenth Meeting.

5. Mahmoud Samy (Egypt), Emma Romano Sarne (Philippines), Maja Markovčic Kosteiac (Croatia) and Thomas Fitschen (Germany), nominated by their respective regional groups, were elected Vice-Presidents by acclamation.

B. Introductory statements

Introductory statement by the President

6. In his introductory statement, the President welcomed all States parties, in particular Estonia, which had become a party to the Convention since the fifteenth Meeting, bringing the total number of parties to 149, as well as the President and Registrar of the Tribunal, the Secretary-General of the Authority and the Chairman of the Commission, emphasizing the important achievements of those bodies since the fifteenth Meeting.

7. The President stated that, as the Convention provided for a balance of interests and equitable solutions for all peaceful uses of the oceans, it was the responsibility of States parties to use the legal framework of the Convention to its fullest potential. He also highlighted the positive developments in the law of the sea and recalled the

[1] See *The Law of the Sea: Official Texts of the United Nations Convention on the Law of the Sea of 10 December 1982 and of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 with Index and Excerpts from the Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.97.V.10).

importance of continued efforts to strengthen the regime of the oceans, stating that States parties should address emerging issues using the Convention as a strong legal foundation.

Statement by the Legal Counsel

8. Nicolas Michel, the Under-Secretary-General for Legal Affairs and Legal Counsel, made particular reference in his statement to the upcoming tenth anniversary of the establishment of the Tribunal, noting the Tribunal's contribution to the peaceful settlement of disputes and to the maintenance of the rule of law in the oceans. Addressing matters related to the work of the Commission, he highlighted the growth of the current and projected workload of the Commission. He also pointed out the consequent demands for increased support to the Commission by the Secretariat, through the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs, and elaborated on a number of significant steps that the Secretariat had taken to accommodate the Commission's requirements.

9. With regard to the establishment of the outer limits of the extended continental shelf, the Legal Counsel informed the Meeting about capacity-building activities carried out by the Secretariat through the Division. He informed the Meeting about the publication of the training manual for delineation of the outer limits of the continental shelf beyond 200 nautical miles and for the preparation of submissions to the Commission and the organization and delivery of regional training courses based on that manual. He noted that, drawing on the experience gained with those training courses, the Secretariat was planning to develop other training programmes in areas such as marine protected areas, ecosystem management based approaches, maritime security and marine biodiversity. Finally, the Legal Counsel expressed his conviction that the States parties would remain united in implementing the goals of the Convention, in particular the promotion of the peaceful uses of the seas and oceans.

C. Adoption of the agenda and organization of work

10. The President introduced the provisional agenda (SPLOS/L.46) and proposed editorial amendments. The Meeting adopted the provisional agenda as amended (SPLOS/141).

11. The President outlined the organization of work, noting the need for flexibility in dealing with individual agenda items to ensure the maximum efficiency of proceedings. The Meeting approved the organization of work as outlined by the President.

III. Reports of the Credentials Committee

12. Upon the nomination of the respective regional groups, the Meeting appointed, on 21 June 2006, a Credentials Committee consisting of the following nine members: Albania, Brazil, Cyprus, Netherlands, Senegal, Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland, Viet Nam and Zimbabwe.

13. On 23 June 2006, Polly Ioannou (Cyprus), Chairperson of the Credentials Committee, introduced the first and second reports of the Committee (SPLOS/142 and SPLOS/143). She stated that the Committee had held two meetings, on 21 and

23 June 2006, at which it had examined and accepted the credentials of representatives to the sixteenth Meeting from 114 States parties to the Convention and the European Community and recommended to the Meeting the adoption of draft resolutions through which the Meeting would approve the reports of the Credentials Committee. On 23 June 2006, the Meeting approved the first and second reports of the Committee.

IV. Matters related to the International Tribunal for the Law of the Sea

A. Annual report of the Tribunal

14. The annual report of the Tribunal for 2005 (SPLOS/136) was submitted to the Meeting in accordance with rule 6, paragraph 3 (d), of the Rules of Procedure.

15. In introducing the report, Judge Rüdiger Wolfrum, who was elected President of the Tribunal for a three-year term on 1 October 2005, described the work carried out by the Tribunal during the two sessions held in 2005, the nineteenth, from 7 to 18 March, and the twentieth, from 26 September to 7 October. He informed the Meeting about the election, during the twentieth session, of Judge Joseph Akl as Vice-President of the Tribunal and Judge Hugo Caminos as President of the Seabed Disputes Chamber, and about the reconstitution of the chambers and committees following the election of seven judges of the Tribunal in 2005 (see SPLOS/136, paras. 18, 19 and 39). He further indicated that the Tribunal was considering the possibility of establishing a new chamber for maritime delimitation and that it had decided to establish a Committee on Public Relations to promote the work of the Tribunal and maintain its relations with other international organizations and institutions.

16. With regard to legal and judicial matters, the President of the Tribunal informed the Meeting that the Committee on Rules and Judicial Practice and the plenary had reviewed the Rules and judicial procedures of the Tribunal, in particular those relating to the implementation of the Rules in prompt release proceedings, access to case-related documents, contributions towards the expenses of the Tribunal, rules regarding evidence, the preparation of a guide to proceedings before the Tribunal, bonds and other financial security in prompt release proceedings, the implementation of the Tribunal's decisions, and proceedings before the Seabed Disputes Chamber (SPLOS/136, paras. 47-56).

17. The President described the judicial work carried out by the Tribunal, focusing on the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*, which was still pending on the docket (SPLOS/136, paras. 32-36). He mentioned that the Special Chamber of the Tribunal formed to deal with the case had met on 28 and 29 December 2005 to consider a request of the parties for further postponement of time limits. By its order of 29 December 2005, the Chamber had extended the time limit for making preliminary objections until 1 January 2008. In connection with this case, the first to have been submitted to an ad hoc chamber of the Tribunal, Judge Wolfrum highlighted the advantages in terms of costs, logistics and flexibility provided by proceedings before ad hoc chambers of the Tribunal as compared to the proceedings before arbitral tribunals.

18. The President also recalled the conclusion of an agreement between Malaysia and Singapore on 26 April 2005 which had settled their dispute concerning land reclamation by Singapore in and around the Straits of Johor. He underlined the key role the Tribunal had played in the resolution of the dispute; it had prescribed provisional measures to be applied through an order issued under article 290, paragraph 5, of the Convention on 8 October 2003 (SPLOS/136, para. 38).

19. Referring to the upcoming tenth anniversary of the establishment of the Tribunal, the President noted that the Tribunal had established a reputation for dealing with cases in an expeditious and efficient manner and, in prompt release cases, had developed a coherent jurisprudence. He observed that the Tribunal had dealt with marine environmental issues, contributing to the development of international environmental law. He recalled that the General Assembly had noted, in its resolution 60/30, the continued and significant contribution of the Tribunal to the settlement of disputes by peaceful means.

20. Elaborating on the broad competence of the Tribunal in disputes and questions relating to the law of the sea, the President of the Tribunal pointed out that only 38 States parties to the Convention had filed declarations under article 287 of the Convention, and 22 States parties had chosen the Tribunal as the means or one of the means for the settlement of disputes concerning the interpretation or application of the Convention. In the absence of declarations under article 287 of the Convention, or if the parties had not selected the same forum, the dispute could only be submitted to arbitration, unless the parties otherwise agreed. Thus, arbitration under Annex VII to the Convention was the default method for peaceful settlement of disputes. In that respect, the Tribunal had not yet fulfilled the expectations of the Convention's drafters.

21. The President pointed out that the jurisdiction of the Tribunal could also be based on a special agreement or on jurisdictional clauses included in multilateral or bilateral agreements. In addition, the Tribunal had jurisdiction over disputes relating to the interpretation or application of treaties which were already in force related to the subject matter covered by the Convention, provided that all parties to such a treaty so agreed.

22. The President recalled the advisory jurisdiction of the Tribunal, underlining in particular that it might offer an alternative to contentious proceedings and could be a mechanism well-suited for parties seeking a non-binding opinion on a legal question or an indication as to how a particular dispute might be solved through direct negotiations. While resort to the Tribunal was at no cost to States parties to the Convention, the President noted that each party had to bear its own expenses, such as the cost of preparation of pleadings, the professional fees of counsel and advocates and travel expenses. In that connection he drew the attention of delegations to the trust fund established to assist States parties in the settlement of disputes through the Tribunal, administered by the United Nations.

23. The President announced a series of events organized for the end of September 2006 to celebrate the first decade of the Tribunal. In particular, he mentioned the tenth anniversary ceremony to be held at the seat of the Tribunal on 29 September 2006, followed by a two-day symposium entitled "The jurisprudence of the International Tribunal for the Law of the Sea: assessment and prospects" on 29 and 30 September 2006. He described other educational activities planned by the Tribunal, in particular a series of regional law of the sea workshops organized in

collaboration with the International Foundation for the Law of the Sea and a "summer academy" starting in the summer of 2007 that would complement the internship programme administered by the Tribunal. In that connection, he expressed gratitude to the Korea International Cooperation Agency (KOICA) for the financial support it provides to the internship programme.

24. The President drew attention to the status of the Agreement on the Privileges and Immunities of the Tribunal (SPLOS/25) and the call by the General Assembly in paragraph 31 of its resolution 60/30 for States that had not done so to consider ratifying or acceding to the Agreement. Twenty-three States had so far ratified or acceded to the Agreement.

25. He reiterated the appeal contained in the same resolution (para. 29) to all States parties to pay their assessed contributions to the Tribunal in full and on time, underlining the significant amount of outstanding contributions (€1,820,240 for the period from 1996 to 2005 and €2,245,562 in relation to the 2006 budget, as at 31 May 2006).

26. Finally, the President reiterated his appreciation for the excellent cooperation that the authorities of the host country, Germany, had extended to the Tribunal.

27. Following the statement by the President of the Tribunal, the representative of Germany reiterated his satisfaction with regard to the cooperation between the host country and the Tribunal. He informed the Meeting that the headquarters agreement should enter into force in the near future, as it had been submitted to the German Parliament for ratification.

28. Several delegations emphasized the importance of the role of the Tribunal and its contribution to the development of international law, and also expressed appreciation for its initiatives, in particular the publication of a guide to the proceedings before the Tribunal. Others noted that the Tribunal was fully equipped to carry out its mandate expeditiously and expressed regret that the Tribunal had not been used more frequently. In that connection, delegations expressed their appreciation to the countries that had made contributions to the trust fund established to assist States in settling disputes through the Tribunal and made calls for further contributions. It was also noted that the increased use of the Special Chambers established by the Tribunal would facilitate the settlement of disputes in a user-friendly and efficient way and would help to broaden the work of the Tribunal.

29. With reference to annex II to document SPLOS/136, one delegation raised the issue of the application, within the Registry of the Tribunal, of the principle of equitable geographical distribution, pointing out that some regional groups were underrepresented or not represented among staff at the professional and higher levels. Other delegations, expressing similar concerns emphasized the need for the Tribunal to judiciously apply equitable geographic distribution when hiring staff. It was suggested that even wider dissemination of vacancy announcements could be helpful. The President of the Tribunal explained that the Tribunal fully supported the principle of equitable geographical representation but was constrained by the availability of candidates meeting the qualifications set forth in article 35 of the Rules of the Tribunal and possessing the required proficiency in English and French. In that respect, he drew attention to the independence of the Tribunal. With regard to the Registrar and Deputy Registrar, the President noted that they were appointed from a list of candidates nominated by the Judges of the Tribunal in accordance with

article 32 of the Rules. He also noted that the composition of the judges of the Tribunal followed equitable geographical distribution.

30. The Meeting took note with appreciation of the report of the Tribunal (SPLOS/136).

B. Report of the external auditors for the financial year 2004, with financial statements of the Tribunal as at 31 December 2004

31. The President of the Tribunal introduced the report of the external auditors for the financial year 2004 (SPLOS/137), which also contained the financial statements of the Tribunal as at 31 December 2004. He indicated that the auditors had expressed the opinion that the annual financial statements presented a true and fair view of the net assets, financial position and results of the operations of the Tribunal, in conformity with the principles of proper accounting and with the Financial Regulations of the United Nations, which had been applied mutatis mutandis. The operational procedures of the Tribunal were also in accordance with the Rules and Staff Rules of the Tribunal and the Financial Regulations and Rules of the United Nations applied mutatis mutandis.

32. A number of delegations welcomed the conclusion of the external auditors, emphasizing the importance of sound financial management of the Tribunal. It was pointed out, however, that the report for 2005 had not been submitted and some delegates requested an adjustment in the working methods of the Tribunal to enable States parties to consider the most recent report of the external auditors. One delegation further noted that, generally, audit reports contained management recommendations, and requested that such information should be submitted to States parties. Responding to these statements, the Registrar of the Tribunal noted that the reports of the external auditors were prepared at the end of the biennial financial period and pointed out the practical consequences of the application of the Financial Regulations and the Rules of the Tribunal and the document processing requirements of the Secretariat. He stated, however, that the Registry of the Tribunal would endeavour to provide States with an advance copy of the next report of external auditors, as appropriate. Concerning the management report, the President of the Tribunal explained that according to the established practice, it was provided only to the auditors for the next audit and not to the Meeting. That practice was also applied by other international organizations.

33. With the comments and clarification above, the Meeting took note of the report of the external auditors for 2004.

C. Consideration of budgetary matters of the Tribunal

1. Draft budget for the financial period 2007-2008

34. The President of the Tribunal introduced the draft budget proposals for the Tribunal for 2007-2008 (SPLOS/2006/WP.1), emphasizing that they had been drawn up on the basis of an evolutionary approach intended to optimize efficiency. As in the past, the Tribunal had been guided by the principle of zero growth, taking into account the local rate of inflation as determined by the authorities of the host country. Some budget lines had been adjusted accordingly, while the inflation rate

had not been applied to other budget lines in order to minimize the overall increase in the budget for 2007-2008, even though those lines were subject to inflation.

35. Regarding the expected volume of judicial and administrative work of the Tribunal, the draft budget provided for the convening of meetings for a total of 10 weeks during each calendar year, in line with the level approved by the Meeting of States Parties for the past seven years. The President stressed that the Tribunal intended, whenever possible, to hold sessions in conjunction with proceedings in cases submitted to the Tribunal.

36. The President stressed that the increase of €827,801 compared to the budget for 2005-2006, for a total budget of €17,214,700, was largely due to circumstances beyond the control of the Tribunal. Those circumstances were the adjustments of the level of the judges' remunerations, the application of the floor-ceiling mechanism as decided by the fifteenth Meeting of States Parties, the pension scheme, inflation and a change in staff costs, as determined by the United Nations. For that reason, the President emphasized, the budget proposals for 2007-2008 should not be considered a fundamental departure from the principle of zero growth. With regard to the adjustments in the level of remuneration of judges, he explained that for the 2007-2008 biennium, the floor-ceiling mechanism applied to the adjusted level of annual and special allowances of judges would apply for a period of 24 months, instead of 18 months as in 2005-2006. In respect of pensions, he stressed that the seven judges whose terms of office would expire in September 2008 would be entitled to a pension with effect from October 2008, while the five judges whose mandate had ended in September 2005 would receive a pension for 24 months in 2007-2008 instead of 15 months as in 2005-2006.

37. With regard to staff costs, he noted a substantial increase (€353,100) resulting from increased standard costs for staff and common staff costs. He drew attention to the fact that, in order to minimize the overall increase in the budget, the Tribunal was proposing a provision for common staff costs for 2007-2008 based on a projection of actual costs rather than following the practice of applying the common staff costs rate fixed by the United Nations. He also proposed to reclassify the post of the head of Building Management Services from the P-2 to the P-3 level since the functions of the incumbent of the post had substantially expanded.

38. The increased budget also provided for an extension of library space, to proceed on the basis of a cost-sharing arrangement according to which the host country would bear 60 per cent of the cost and the Tribunal would contribute 40 per cent.

39. Finally, the President drew the attention of the Meeting to decreases in several budget lines, totalling €57,400.

40. During the ensuing debate, some delegations emphasized that the draft budget of the Tribunal should be based on the principle of zero growth. On the other hand, it was pointed out that the Meeting of States Parties had never taken a decision that the budget should be based on such a principle.

41. In accordance with the Rules of Procedure and established practice, the Meeting decided to review the proposed budget in the open-ended working group on financial and budgetary matters under the chairmanship of the President of the Meeting. Following its deliberations, the working group recommended the adoption of the proposed budget of the Tribunal in the amount of €17,214,700 as contained in

draft decision SPLOS/L.47. The Meeting adopted that draft decision without a vote (SPLOS/145).

42. One delegation reiterated that while it had supported the adoption of the new budget of the Tribunal, future budgets of the Tribunal should be prepared on the basis of the principle of zero growth.

7. Report on budgetary matters for the financial period 2005-2006

43. The President presented the report on budgetary matters for 2005-2006 as contained in document SPLOS/138, dealing with the following three parts.

Provisional performance report for 2005 (biennium budget 2005-2006)

44. The President recalled that, in June 2004, the fourteenth Meeting of States Parties had approved a budget of €15,506,500 for 2005-2006. In addition, in June 2005, the fifteenth Meeting of States Parties had authorized the Tribunal to use €528,500 from the savings accrued in 2002 and 2004 and approved a supplementary budget of €351,899 for 2005-2006 to finance overexpenditures resulting from the adjustment of remuneration of the judges, the application of the floor/ceiling mechanism and the increases in the daily subsistence allowance. As a result, the additional appropriations amounted to €880,339. From those appropriations, €312,684 had been allotted for 2005.

45. The President indicated that, as at March 2006, the total expenditure for 2005 had stood provisionally at €6,434,245. Since then, the total expenditure had changed slightly and stood at €6,427,553, representing 83.92 per cent of the amount of appropriations approved for 2005. The underperformance was explained by the fact that no new cases had been submitted to the Tribunal during 2005. However, when the case-related costs were excluded, the performance rate for other costs for 2005 reached 96.82 per cent.

Report on action taken pursuant to the decisions on budgetary matters for 2005-2006 taken by the fifteenth Meeting of States Parties

46. The President noted that on the basis of the initial budget for 2005-2006 approved in June 2004, two budget lines were overrun in 2005 in relation to judges owing to the application of the floor ceiling mechanism and an increase in the daily subsistence allowance applicable to Hamburg.

47. In the light of the provisional performance for 2005, the Tribunal had decided at its March session that, subject to approval by the Meeting of States Parties, additional appropriations for 2005 would be surrendered and deducted from assessed contributions for the States parties for 2007, thereby reducing the proposed budget for 2007-2008 by €312,684. The matter was referred to the working group on budgetary and financial matters, which recommended to the Meeting the adoption of a decision as contained in document SPLOS/L.48. The decision was adopted without a vote (SPLOS/146).

Report on action taken pursuant to the Financial Regulations of the Tribunal

48. The President provided information on action taken pursuant to the Financial Regulations of the Tribunal with respect to investments of funds and the KOICA

trust fund. He expressed gratitude to KOICA for its additional contribution of $100,000 to the fund.

49. Several delegations expressed concern over the arrears in the payment of assessed contributions and called upon Parties to honour their commitments and pay outstanding contributions in full and on time. Delegations expressed satisfaction with the responsible way in which the Tribunal had conducted its work. One delegation enquired about the savings in staff costs resulting from vacant positions in the Registry and the implications of having those positions vacant. The Registrar indicated that the recruitment process for the vacant positions had been completed.

D. Establishment of a staff pension committee within the Tribunal

50. The President introduced a proposal by the Tribunal for the establishment of a staff pension committee (SPLOS/139), stressing that this would not have any financial implications.

51. One delegation noted that representation in the committee might entail attendance at board meetings, usually held in New York, and therefore financial implications. The Registrar explained that the pension committee could be set up within the Tribunal and meet once a year. The Meeting of States Parties could designate a member and an alternate from a State party who could be an embassy or consular representative based in Berlin. A representative of the committee would only attend yearly board meetings if necessary, depending on requests addressed to the committee.

52. The matter related to the establishment of a staff pension committee was referred by the Meeting to the open-ended working group on financial and budgetary matters for consideration. The working group recommended to the plenary the adoption of the draft decision relating to the establishment of the staff pension committee of the Tribunal contained in document SPLOS/L.49. The Meeting adopted the draft decision by consensus (SPLOS/147).

53. The Meeting approved a proposal of the President of the Meeting that he would conduct intersessional consultations with States parties with a view to selecting the member and alternate member of the staff pension committee of the Tribunal, who were to be chosen, according to the decision, by the Meeting.

V. Information on the activities of the International Seabed Authority

54. Nii Allotey Odunton, Deputy to the Secretary-General of the Authority and Interim Director-General of the Enterprise, speaking on behalf of the Secretary-General of the Authority, Satya Nandan, informed the Meeting about the activities carried out by the Authority.

55. The Assembly of the Authority, at its eleventh session, had considered the annual report of the Secretary-General and the report of the Finance Committee. The Council had approved, upon the recommendation of the Legal and Technical Commission, an application for a plan of work for exploration for polymetallic nodules in the International Seabed Area submitted by Germany, represented by the

Federal Institute for Geosciences and Natural Resources. That application was the first since the entry into force of the Convention. The Council had also carried out a first reading of the draft regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts prepared by the Legal and Technical Commission, and was due to resume its considerations of the draft regulations at the twelfth session.

56. The Authority was organizing its ninth workshop, entitled "Cobalt-rich ferromanganese crusts and seafloor polymetallic sulphides deposits: technological and economic considerations". It had conducted its eighth workshop, entitled "Cobalt-rich crusts and the diversity and distribution patterns of seamount fauna", in Kingston from 27 to 31 March 2006, in collaboration with the Seamounts Group of the Census of Marine Life.

57. The Authority had continued its work on establishing a geological model of polymetallic nodule deposits in the Clarion-Clipperton Fracture Zone of the Pacific Ocean and had entered into formal agreements with a number of its contractors whose exploration areas were located in the Fracture Zone, to provide additional data and information and participate in model development.

58. The Deputy to the Secretary-General of the Authority updated the Meeting on the Kaplan project, stating that the third annual progress report had been received in March 2006. The project activities were concentrated on processing and analysing samples obtained during the field programme of previous years.

59. The Finance Committee and the Assembly were due to consider, at the twelfth session of the Authority, a proposal whereby the application fees paid by contractors would be transferred to a special endowment fund account, the income from which would be utilized to promote marine scientific research and provide opportunities for qualified scientists from institutions in developing countries to participate in research activities.

60. The Deputy to the Secretary-General of the Authority urged all States parties to participate in the meetings of the Authority, since the Authority could conduct its business effectively only in the presence of a majority of its members.

61. Finally, he made an appeal to the countries that were not yet parties to the 1994 Agreement relating to the implementation of Part XI of the Convention (General Assembly resolution 48/263, annex), as well as the Protocol on the Privileges and Immunities of the International Seabed Authority (ISBA/4/A/8), to become parties to those instruments.

62. In response to the statement, one representative noted that the development of a legal regime for exploration of polymetallic sulphides and cobalt-rich ferromanganese crusts was a daunting task, owing to the lack of sufficient knowledge and information. He stated that the deep seabed environment might be affected by the exploration activities, which was the shared concern of the international community, and expressed hope that the Kaplan project would provide necessary scientific information in order to predict and manage the impact of seabed mining on the marine environment.

63. Several delegations voiced their support for the Authority, in particular for the innovative and proactive way in which the Authority had carried out its mandate in the area of environmental protection. They added that the Authority might have a

future role in the protection and management of marine biological diversity in the Area. One delegation stated that the Authority had been entrusted to apply ecosystem approaches and should enhance its functions in the protection of the marine environment. According to this view, it was the only organ with the competence and mandate to protect the marine environment beyond areas of national jurisdiction.

64. The Meeting took note with appreciation of the information reported by the Authority.

VI. Information on the activities of the Commission on the Limits of the Continental Shelf

65. The Chairman of the Commission, Peter Croker, recalled his letter dated 19 May 2006 addressed to the President of the sixteenth Meeting (SPLOS/140) and provided an overview of the work of the Commission at its sixteenth and seventeenth sessions, which had been held since the last Meeting of States Parties.

66. In the light of the expected submissions, and reminding the Meeting of his letter to the President of the fifteenth Meeting of States Parties (SPLOS/129) and his presentation to that Meeting, the Chairman outlined two issues of urgent importance, namely (a) additional requirements for staff, facilities, software and hardware essential for the consideration of submissions, and (b) issues related to the workload of the members of the Commission and the funding of their participation in the sessions of the Commission and the meetings of subcommissions. With respect to the first issue, the Chairman noted that, despite the recent financial limitations imposed by the General Assembly for the 2006-2007 biennium, the Secretariat had been able to upgrade technical facilities of the Division so that the Commission could hold simultaneous meetings of three subcommissions established to consider submissions. The Chairman conveyed great appreciation to the Secretary-General for his efforts in that regard. Concerning the second set of issues, the Chairman recalled that the matter had been brought to the attention of the fifteenth Meeting and reiterated that under the current arrangements, the Commission might not be in a position to perform its functions in an efficient and timely manner. The Commission had decided to recommend that the sixteenth Meeting consider a draft decision (SPLOS/140, annex) which proposed, through a draft resolution for consideration by the General Assembly, that the members of the Commission receive emoluments and expenses while performing Commission duties concerning the consideration of submissions made by coastal States on the outer limits of the continental shelf under article 76, and that such emoluments and expenses be defrayed through the regular budget of the United Nations.

67. During the debate, a number of States reaffirmed the importance of the work of the Commission, acknowledging the anticipated increase of its workload owing to the current and projected number of submissions. It was generally agreed that the Meeting should address the situation as a matter of priority in order to ensure that the Commission could continue to perform its functions under the Convention effectively, maintaining its high level of expertise.

68. It was generally recognized that the situation imposed additional burdens on the members of the Commission and the Secretariat as well as increased financial

burden on States, in particular developing States, whose experts served on the Commission. It was agreed that the draft decision represented an important step in bringing the matter to the attention of States parties and stimulating discussion. Divergent views were, however, expressed with regard to the operative part of the draft decision as put forward by the Commission. A number of delegations pointed out that the proposed solution was not consistent with paragraph 5 of article 2 of Annex II to the Convention, which provides that the State which submitted the nomination of a member shall defray the expenses of that member while in performance of Commission duties. Some representatives underscored that any solution ought to be in conformity with that provision. Some other delegations, however, supported the proposal and were of the opinion that the funding of the Commission from the regular budget of the United Nations might be a viable option.

69. Several delegations stated that, instead of exploring solutions incompatible with Annex II to the Convention, greater use should be made of the trust fund established under General Assembly resolution 55/7 to assist members of the Commission from developing States in participating in its meetings. Some delegations pointed out that the trust fund, being a voluntary mechanism, was not a reliable source of funding. In response to that point, a number of delegations encouraged States to make contributions to the trust fund. The delegation of Ireland informed the Meeting that Ireland had pledged a contribution of €150,000, to be paid in three annual instalments of €50,000. The first instalment of €50,000 had been paid in March 2006.

70. The concern was expressed that the extensive time which the members of the Commission might need to devote to Commission duties could negatively affect the careers of some of them. In addition, the quality and expertise of the Commission's members could be affected, because fewer high-level experts might be willing to accept nominations for membership.

71. As a result of the discussion, it was agreed that other than financing the Commission from the regular budget of the United Nations could be explored, including the following:

- Queuing of submissions
- More efficient use of time and facilities
- Longer sessions of the Commission, with increased costs to be defrayed by States nominating the members of the Commission
- More frequent intersessional meetings
- Increasing the amount of work carried out by the members at home during the intersessional period
- Staggering of meetings and, consequently, more efficient use of the Division's premises throughout the year
- Use of current technologies such as videoconferencing
- Adoption of internal procedural measures to ensure a more efficient conduct of the Commission's work
- Giving consideration to the sustainable level of scrutiny the Commission can give to each submission

– Reducing the number of members per subcommission in order to allow the establishment of more subcommissions

– Increasing the support provided by the Secretariat and the degree of its involvement in processing submissions

– Increased use of the trust fund to defray the cost of participation of members from developing States, combined with a call for additional contributions

– Reviewing the terms of reference of the trust fund in order to meet the needs of the Commission.

72. In addition, several delegations suggested that in view of the Commission's anticipated workload and the difficulties that many developing States might experience in the preparation of their submissions, the Meeting might revisit the issue of the 10-year time limit for submitting the required information to the Commission, in particular the time limit of 2009 applied to individual States parties on the basis of the provisions of the Convention and the decision of the Meeting of States Parties (SPLOS/72).

73. A number of States, however, were not prepared to consider the issue of further adjustments of the time limit and felt that a satisfactory solution could be found through other means. The observer for one delegation mentioned the possibility of resorting to partial submissions in order to satisfy the 10-year time limit on the understanding that additional data might be submitted later. One delegation made a comment on the matter of disputes and how they might affect the 10-year time limit. A view was also expressed that considering the importance of each submission to the coastal State concerned and the international community, no such solution should be to the detriment of a thorough examination of that submission by the Commission. Several States parties informed the Meeting that they intended to make a submission to the Commission: Nigeria in December 2006, Iceland and Indonesia in 2007, and Kenya by 2009.

74. One delegation stated that the recommendations drafted by the Commission should be sufficiently explicit to allow the coastal State to establish the outer limits of the extended continental shelf on the basis of those recommendations, should the State agree with them, and deposit the information in accordance with the Convention. Thus, there would be no need for the Secretary-General to seek the opinion of the Commission as to the conformity of the deposited outer limits with the recommendations.

75. The Director of the Division for Ocean Affairs and the Law of the Sea provided factual information regarding a number of points raised by delegations with regard to the workload of the Commission. In relation to timing, he noted the relationship between the proposal of the Commission and the budgetary cycle of the United Nations. He also pointed out that in 2007, the Meeting of States Parties would hold elections for the members of the Commission, and that an action by the Meeting on the issue of funding might influence many States, especially developing countries, with regard to the nomination of their candidates.

76. He further pointed out that the trust fund for the purpose of defraying the cost of participation of members from developing States was limited in its scope and that some other members of the Commission, for example those from economies in transition, experienced difficulties with financing. The problem regarding funding

had become more severe as the length of time that members of the Commission needed to stay in New York had increased. Despite appeals to States by the General Assembly to contribute to the trust fund, only three States had made contributions. Thus, as at the end of 2005, the trust fund had only approximately $49,000[2] and, taking into account the estimated cost of $44,000 for one session, there had been a real possibility that for the second session in 2006, the trust fund would operate with only $5,000.[3] While that situation had been averted thanks to the contribution by Ireland, the trust fund was likely to face similar financial problems if no further contributions were made.

77. The Director addressed issues related to the use of advanced technology and to the volume and confidential nature of data, in the light of which some of the proposed solutions might be too expensive, impractical and unable to substitute for personal interaction and discussion among the members during their meetings in New York. He also pointed out problems related to software availability, licensing and export regulations.

78. At the proposal of the President, the Meeting decided to continue its deliberations on this issue through open-ended informal consultations and appointed Thomas Fitschen (Germany), Vice-President, as Chairman. The Chairman reported periodically to the plenary on the progress of work and, on 23 June 2006, following several rounds of consultations, presented a draft decision on issues related to the Commission's proposals. The Meeting adopted the draft decision without a vote (document SPLOS/144).

79. Also under this agenda item, the Director of the Division provided information on the series of regional training courses on the preparation of submissions to the Commission on the outer limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, which had been organized by the Division in cooperation with States and international organizations, and informed the Meeting about the Division's intention to organize additional training courses at the subregional level.

80. The delegation of Argentina expressed its gratitude to the Division and to the Commission for the training workshop held in Buenos Aires from 8 to 12 May 2006. The workshop, organized by the Division in collaboration with the Government of Argentina and with the support of international organizations including the Commonwealth Secretariat, had been attended by relevant technical staff from Latin America and the Caribbean countries. A number of other delegations also thanked the Division for its capacity-building activities and for the training manual which it had prepared with the assistance of two members of the Commission.

81. On the matter related to the legal opinion issued by the Legal Counsel upon the request of the Commission (CLCS/46), one representative expressed certain concerns. Whereas previous legal opinions requested by the Commission related to the issue of privileges and immunities of the members of the Commission and to the issue of confidentiality, the opinion contained in document CLCS/46 related to the rights and obligations of States parties. When rights and obligations of States were

[2] Figure from the audited accounts for 2005. The figure from the provisional accounts provided in January 2006 was in the region of $39,000.

[3] Including programme support costs of 13 per cent as provided for in paragraph 47 of document ST/SGB/188.

in question, the States concerned ought to be consulted, and when in doubt the Commission should bring the matter to the attention of the Meeting of States Parties. Consequently, in the view of the representative, the request by the Commission and the reply from the Legal Counsel could not be considered to constitute a precedent authorizing the Commission to request additional legal opinions of such a nature. Another delegation, however, welcomed the legal opinion and the decision of the Commission to interact more with coastal States during the examination of their submissions.

82. With regard to the Rules of Procedure of the Commission, some delegations expressed their appreciation to the Commission for having taken into account the views expressed by States at the fifteenth Meeting of States Parties (see SPLOS/135, para. 74) and welcomed the amendments to the Rules, in particular the amended Rule 52, which allowed for a greater role for submitting coastal States in the proceedings of the Commission. Some delegations, however, while appreciative of the efforts of the Commission to address the concerns expressed by States Parties at the fifteenth Meeting, were uncertain as to the conformity of some parts of the Rules of Procedure of the Commission, especially annex III, with the Convention.

VII. Report of the Secretary-General under article 319 of the United Nations Convention on the Law of the Sea

83. Under this agenda item, the sixteenth Meeting had before it the report of the Secretary-General on oceans and the law of the sea (A/61/63). Several delegations expressed their appreciation to the Secretary-General and the Division for the annual report on oceans and the law of the sea and their activities. Some of them pointed out that, in view of the dynamic developments in oceans and the law of the sea, the Division and its reporting functions should not be negatively affected by the ongoing discussions within the United Nations on the review of mandates.

84. A wide range of issues addressed in the report were noted and commented upon. Delegations made statements on a variety of issues such as the developments within the Tribunal, the Authority and the Commission; the impact of climate change and pollution, in particular, on small island developing States; developments related to the Indian Ocean tsunami and the establishment of regional and national early warning systems; shipping and the safety of navigation; the need to put more emphasis in the report on the issue of fishing subsidies; destructive fishing practices, including the issue of a moratorium on bottom trawling; the need for coordination among sector-based organizations such as the regional fisheries management organizations and the Authority; coral reefs and the need to further highlight the issue of responsibility for environmental damage; the recognition of the importance of the ecosystem and precautionary approaches for the management of marine resources, and the need to reflect the role of the Authority in that regard; marine pollution and marine debris; the need for public outreach and education through civil society and the media, and in particular through further cooperation between the Division and the Department of Public Information; piracy and armed robbery; migration, in particular the problem of illicit trafficking of migrants and the human rights of migrants; and seafarers' security and relevant developments within the International Labour Organization (ILO) and the International Maritime Organization (IMO).

85. In relation to maritime security additional issues were raised, such as those relating to the danger of terrorists attacks, the trafficking of weapons of mass destruction, and small arms. One delegation made reference to the Proliferation Security Initiative and reiterated its view that it should be in conformity with the legal regimes of the various maritime areas. Another delegation stated that the report of the Secretary-General should address the concept of maritime security in a broader sense, to include the effects of climate change; the impacts of human activities on marine ecosystems, including the effects of ocean noise on marine mammals and the environmental impacts of tourism; and the social impacts of maritime activities. Some delegations addressed the need to monitor more closely the exercise of flag States responsibilities and to examine and clarify the role of the genuine link. Some delegations requested that the latter issue be included in the agenda of the next Meeting.

86. Delegations also referred to the outcome of the Review Conference on the Fish Stocks Agreement (New York, 22-26 May 2006); the seventh meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (New York, 12-16 June 2006); the Regular Process and the first meeting of the Steering Group (June 2006); and the meeting of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (New York, 13-17 February 2006).

87. Concerning the Consultative Process, delegations considered it to be an important multilateral forum, the future meetings of which should broaden the focus to areas other than environmental ones, such as maritime and food security. With respect to biodiversity beyond national jurisdiction, several delegations addressed the subject of genetic resources, in particular the need to consider new approaches on the basis of the Convention to promote international cooperation and access and benefit sharing. One delegation stated that in order to prevent a situation of unregulated and unilateral use of those resources, future negotiations should aim at adopting a binding instrument which would further elaborate the provisions of the Convention on marine scientific research on the basis of the principle of the common heritage of mankind. Such an instrument would also address the broader issue of conservation of biological diversity beyond areas under national jurisdiction. Should no agreement be reached on the issue in a negotiating forum, the possibility of resorting to other mechanisms for the settlement of disputes would have to be considered. Another delegation stated that existing instruments provided the framework for the conservation and sustainable use of biodiversity beyond areas under national jurisdiction and their strengthening and more effective implementation should be considered before taking decisions on the elaboration of new instruments.

88. The role of UN-Oceans, including its Task Force on Marine Biodiversity beyond National Jurisdiction, as a coordinating mechanism was highlighted. Some delegations emphasized that UN-Oceans needed to take into account the views of States expressed in the General Assembly and other forums as well as the legal framework established by the Convention.

89. On the issue of capacity-building, several delegations welcomed the work of the Division and encouraged the development of its capacity-building programmes, including further training on article 76 of the Convention. The Meeting also noted

that the institutions established under the Convention played an important role in this field, as evidenced by the marine scientific research workshops organized by the Authority and the development by the Tribunal of workshops and the guide on the proceedings before it.

90. The use of trust funds to facilitate, for example, the participation of representatives of developing countries in meetings of the Finance Committee and the Legal and Technical Commission of the Authority was also raised. One delegation highlighted the need to increase awareness among developing States of the existence of the funds. Some delegations reaffirmed that increased cooperation among States and at the regional level would be beneficial in building capacity in developing States, including in the establishment of regional centres in accordance with article 276 of the Convention. With regard to marine scientific research, some delegations welcomed recent national initiatives such as the training of staff from African countries by Germany on board its research and mineral exploitation vessel and the gift of a research vessel by Japan to Nigeria. One delegation suggested, for inclusion in the General Assembly resolution on oceans and the law of the sea, that it was timely to further review the needs of States in the light of recent developments to give effect to the Convention, such as the 1995 Fish Stocks Agreement. The last study on the matter had been carried out in 1991.

91. Several delegations provided the Meeting with updates on regional initiatives such as the Conference on Maritime Delimitation in the Caribbean and the Regional Agreement on Combating Piracy and Armed Robbery against Ships in Asia of the Association of Southeast Asian Nations which is to enter into force on 4 September 2006.

92. As in previous years, divergent views were expressed under this agenda item with regard to the role of the Meeting of States Parties in relation to the discussion of substantive matters.

93. Several delegations reiterated their view that the Meeting of States Parties should not be limited to discussing administrative and budgetary matters. The Meeting represented the logical forum for discussions on all issues pertaining to the implementation of the Convention. It could contribute to maintaining the integrity of the Convention while protecting the balance achieved therein. One delegation noted that a partial application of the Convention's provisions, the multiplication of forums where relevant issues were considered and the adoption of interpretative language in the resolutions of the General Assembly represented a threat to the integrity of the Convention. In the view of this delegation, the Meeting of States Parties could act as the unifying forum to address issues of relevance for the implementation of the Convention. Delegations supporting a substantive role for the Meeting underlined that while the General Assembly was the inclusive forum for discussions on development and issues relating to the oceans and the law of the sea, the Meeting of States Parties should not be precluded from discussing issues of substance, on the understanding that duplication should be avoided. One delegation noted that such discussions, if held in good faith, could lead to increased cooperation among States and provide a good opportunity for States, in particular small States, to participate and understand ocean-related issues in preparation for the negotiations of the resolutions of the General Assembly on oceans and the law of the sea and sustainable fisheries.

94. Other delegations reiterated their view that the Meeting of States Parties did not have the competence to discuss substantive issues relating to the implementation of the Convention. The relevant parts of the Convention referring to the Meeting of States Parties, namely annexes II and VI, conferred on the Meeting the competence to examine administrative and budgetary matters related to bodies established by the Convention and to elect the members of the Tribunal and the Commission. An example of an issue that fell under that category was the discussion of the problems related to the work of the Commission and its additional funding. Furthermore, according to these delegations, the negotiating history of the Convention showed that a proposal to establish a mechanism to review common problems and address new uses of the sea had not attracted the necessary support at the Third United Nations Conference on the Law of the Sea.

95. In addition, the report of the Secretary-General on oceans and the law of the sea was submitted to the General Assembly and, in accordance with the agreement reached at the fourteenth Meeting, to the Meeting, pursuant to article 319, for the information of States on issues of a general nature, relevant to States parties, that arose with respect to the Convention. Thus, in the view of these delegations, the General Assembly was the most appropriate and all-inclusive forum in which to discuss substantive issues that were raised in the reports of the Secretary-General. In addition, it was recalled that the Consultative Process had been established by the Assembly to facilitate its annual review of developments in ocean affairs. The Meeting, therefore, should limit its consideration of the report to taking note of it.

96. The Meeting decided to retain the item "Report of the Secretary-General under article 319 for the information of States parties on issues of a general nature, relevant to States parties, that have arisen with respect to the United Nations Convention on the Law of the Sea" on the provisional agenda for the next Meeting of States Parties.

VIII. Other matters

A. Presentation of the guide to proceedings before the Tribunal

97. The President of the Meeting invited the President of the International Tribunal for the Law of the Sea, Judge Rüdiger Wolfrum, to present the newly published guide to proceedings before the Tribunal. Judge Wolfrum explained how the guide described the composition and competencies of the Tribunal, the scope of its jurisdiction and its rules of procedure. In addition he provided examples of jurisdictional clauses and other references presented in the guide to assist States in conferring jurisdiction on the Tribunal and preparing the necessary documentation prior to approaching the Tribunal.

B. Tribute to the memory of Professor Louis B. Sohn

98. The Meeting paid tribute to the memory of Professor Louis B. Sohn, eminent international law scholar and representative of the United States of America to the Third United Nations Conference on the Law of the Sea, who had recently passed away.

C. Statement by observers for non-governmental organizations

99. In accordance with rule 18, paragraph 4, of the Rules of Procedure, the observer for the International Confederation of Free Trade Unions (ICFTU) was invited to address the Meeting. Speaking also on behalf of the International Transport Workers Federation, the observer called attention to the report entitled "Out of sight, out of mind" on human rights issues in the maritime and fishing industries. The report exposed alarming abuses experienced by seafarers and fishers, including cases of extreme physical violence and systematic cheating on their wages, which were occurring despite an extensive body of international instruments.

100. With reference to article 94 of the Convention, the observer for ICFTU noted that there were numerous shortfalls in flag State implementation, which related to the issue of the genuine link. She pointed out that the report contained a recommendation for the General Assembly to adopt an implementing agreement with a view to ensuring that flag States would effectively discharge their obligations under the Convention. In her view, the issue of the genuine link should be considered by the next meeting of the Consultative Process.

101. She emphasized that the human rights of seafarers and fishers needed to be safeguarded, and not compromised even in the event of measures to prevent pollution and improve security, pointing out the dependence of seafarers and fishers on the ratification and effective implementation of international conventions to protect their fundamental rights. In conclusion, and in order to improve the working and living conditions of seafarers, she called for the ratification of the 2003 ILO Seafarers' Identity Documents Convention (No. 185) and the Maritime Labour Convention of 2006.

102. Some delegations made statements sharing the concerns raised in the report "Out of sight, out of mind". One delegation also called for seafarers to exert caution and not to board ships flying flags of convenience or engaged in illicit fishing.

D. Statement by the President at the closure of the fifteenth Meeting of States Parties

103. The President made a statement recalling the particularly intensive programme of work carried out by the Meeting. On behalf of the Meeting, he expressed appreciation to the President of the International Tribunal for the Law of the Sea, the Secretary-General of the International Seabed Authority and the Chairman of the Commission on the Limits of the Continental Shelf for the information they had provided on the activities of their respective institutions. He expressed appreciation to the members of the Bureau and the Credentials Committee for the functions they had performed during the Meeting.

104. The President drew the attention of States parties to the need to ensure that assessed contributions to the Tribunal and the Authority were paid in full and on time; urged States whose experts served as members of the Commission on the Limits of the Continental Shelf to facilitate their participation in meetings of the Commission; and invited all States parties to consider how to provide further support to the Commission, taking into account the information contained in the statement of its Chairman.

105. With regard to the issues concerning maritime security and the well-being of crews of ships, brought to the attention of the Meeting by the observer for ICFTU, the President expressed his confidence that representatives of States parties had taken note of that statement, as appropriate, and would report the concerns of the workers at sea to their Governments.

E. Dates and programme of work for the seventeenth Meeting of States Parties

106. The seventeenth Meeting of States Parties will be held in New York in June 2007, on dates to be determined by the General Assembly.

107. The seventeenth Meeting will have on its agenda, inter alia, the following items:

- Report of the International Tribunal for the Law of the Sea to the Meeting of States Parties for 2006 (rule 6 of the Rules of Procedure for Meetings of States Parties)
- Information on the activities of the International Seabed Authority
- Information on the activities of the Commission on the Limits of the Continental Shelf
- Election of members of the Commission on the Limits of the Continental Shelf
- Report on budgetary matters of the International Tribunal for the Law of the Sea, 2005-2006
- Financial statement of the International Tribunal for the Law of the Sea and report of the external auditors for the financial period 2005-2006
- Report of the Secretary-General under article 319 for the information of States parties on issues of a general nature, relevant to States parties, that have arisen with respect to the United Nations Convention on the Law of the Sea
- Other matters.